

REMARKS

STATUS OF THE CLAIMS

Claims 4-17 were pending in this application. Claims 16 and 17 have been canceled without prejudice. Claims 4, 7-11 and 13-15 have been amended herein. Claims 4-7 were previously withdrawn and are method claims dependent on the pending composition claims. Following entry of the amendments claims 8-15 will be pending and at issue.

SUPPORT FOR AMENDMENTS TO THE CLAIMS

Withdrawn method claim 4 has been amended to more clearly depend on composition claim 8, incorporating the limitations of amended claim 8. Withdrawn method claim 7, dependent on claim 4, has been amended to more clearly recite the identification of the probes used in the method.

Claims 8-10, 13, and 15 have been amended to change the language “comprising” a SEQ ID NO: to “consist of” or “consisting of” a SEQ ID NO.

Claims 11 and 14 has been amended to change “12 to 50 nucleotides in length” to “19 to 33 nucleotides in length.”

Support can be found throughout the specification as filed, e.g., paragraphs 14 and 15 and the claims as originally filed, and, e.g., the sequence listing (SEQ ID NO:3 (33 nucleotides in length) and SEQ ID NO:10 (19 nucleotides in length)).

The amendments to the claims therefore add no new matter and entry is respectfully requested.

SUPPORT FOR AMENDMENTS TO THE SPECIFICATION

The specification has been amended at paragraph [00011] to delete reference to an embedded hyperlink. The amendments therefore add no new matter and entry is respectfully requested.

ELECTION/RESTRICTION REQUIREMENT

Applicant affirms election of claims 8 and 11-13 and the specific combination of SEQ ID NO:4 and 8 and the set of oligonucleotides of SEQ ID NO:1, 2, 3, 5, 6, and 7 as provisionally elected by Applicant's representative by telephone on 06/29/06. Applicant notes that claims 9-10 and 14-17 should be rejoined if claim 8 is allowed. In addition, Applicant notes that withdrawn method claims 4-7 should be rejoined if composition claim 8 is allowed.

OBJECTION TO THE SPECIFICATION

The disclosure was objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant has deleted the embedded hyperlink and/or other form of browser-executable code and withdrawal of the objection is requested.

REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

Claims 11-13 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner stated that the language "12 to 50 nucleotides in length" was not supported in the specification and raised issues of new matter.

Applicant respectfully disagrees. Paragraphs [0006] to [0008] clearly describe the claimed invention as including the SEQ ID NO: of the disclosed oligonucleotides and "any primers that are derived from these nucleotides sequences" or "any probes that are derived from these nucleotides sequences." One of skill in the art would readily understand that the derived primers and probes would have lengths that are useful for the application, e.g., detection via a PCR assay, e.g., 12-50 nucleotides in length.

However, without agreeing with the Examiner's position but rather to further prosecution, Applicant has amended claim 11 (and 14) to recite "19 to 33 nucleotides in length." Support can be found in the specification as filed, SEQ ID NO:3 (33 nucleotides in length) and SEQ ID NO:10 (19 nucleotides in length). Claims 12 and 13 depend on claim 11 and therefore included the amended language. Applicant requests withdrawal of this rejection as drawn to the amended claims.

Claims 8 and 11-13 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner stated that “the recitation of “comprises” is open language and “comprises” reads on full length genomic sequences from any source ...”

Without agreeing with the Examiner’s position but rather to further prosecution, Applicant has amended claims 8 and 11-13 to recite “consisting of” or “consists of” a SEQ ID NO. The rejection is moot as drawn to the amended claims and Applicant requests withdrawal of this rejection.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 8 and 11-13 were rejected under 35 U.S.C. § 102(b) as allegedly unpatentable over the reference Hu et al (1998). The Examiner stated that “... Hu et al teach the sequence of pMTI which comprise nucleotide 85237-85136 which are identical to SEQ ID NO:4 and nucleotides 13354-13500 which are identical to SEQ ID NO:8. Therefore, pMTI is a composition that comprises SEQ ID NO:4 and 8.”

Applicant has amended the claims to recite “consists of” or “consisting of” recited SEQ ID NOS. The cited reference does not teach isolated polynucleotides that consist of SEQ ID NO:4 or SEQ ID NO:8.

Accordingly, the cited reference does not teach each and every element of the claimed invention and cannot anticipate the claimed invention as described in the amended claims. Withdrawal of this rejection is requested.

STATEMENT OF SUBSTANCE OF INTERVIEW

Applicant thanks the Examiner for her time during a telephone interview on Tuesday November 7, 2006 and Wednesday, November 15, 2006. Examiner Bausch and Applicant’s representative, Patent Agent Susan Hubl were present for the interview. No exhibits or demonstrations were presented or discussed. During the interview, claims 4 and 7-15 were discussed.

On November 7, 2006, Examiner Bausch agreed to review a set of proposed amendments to the claims, which were faxed to the Examiner that day. During the telephone call on November 15, Examiner Bausch indicated that she had reviewed the amended claims and discussed them with her Supervisor. Examiner Bausch indicated that the amendments were acceptable and would place the claims in condition for allowance. The claim amendments presented herein are identical to the proposed claim amendments with the exception of the recitation of "19 to 33 nucleotides in length" which was "19 to 32 nucleotides in length" in the proposed amendments due to a typographical error.

CONCLUSION

Consideration of the claims is respectfully requested, and a notice of allowance is earnestly solicited. If the Examiner has any questions concerning this Response, the Examiner is invited to telephone Applicant's representative at (415) 875-2316.

Respectfully submitted,
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Dated: December 5, 2006

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